Supreme Court, U.S.
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No. 92-736

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

HIRAM H. HOELZER,
Petitioner

v.

THE CITY OF STAMFORD, CONNECTICUT
Respondent

Petition for Writ of Certiorari to the United States Supreme Court of Appeals from the Second Circuit

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BRIEF OF THE RESPONDENT IN OPPOSITION

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STATEMENT OF THE CASE

Hiram Hoelzer ("Hoelzer"), an art restorer, sued in state court in 1989 to quiet title to WPA murals, removed from the walls of the Stamford High School, which he restored from 1972 to 1987. After failing to gain title for years, he has finally won, and now is seeking the extraordinary relief of certiorari for a state law question, complaining that granting of the equitable relief that he long sought is so unfair as to require Supreme Court supervision of the Second Circuit!

Hoelzer always "categorically rejected all ownership claims by the City", as he alleged in his complaint. His Complaint sought title in the first count since the "title was clouded" by Stamford's "erroneous claim" that it owned the murals in August, 1986 by Marguerite Strop, the City's art director (¶14), which provoked Plaintiff to get a

ownership disclaimer from GSA (¶15). In September and October, 1986 after an exchange of letters between Mr. Hoelzer and the Corporation Counsel as to ownership (¶¶16-18), Hoelzer brought this action to quiet title.

After the state court action was removed to the federal court for the Southern District of New York, the trial court (Stanton, J) ruled that the City of Stamford had title to the murals; Hoelzer v. Stamford, 722 F. Supp. 1106 (SDNY 1989). See Appendix attached to Hoelzer's Petition (hereinafter "App.") pp. A38-A72.

The trial court decision emphasized that from 1986 to the present, Hoelzer did not seek compensation for his work on the murals, but ownership of the murals based upon a theory of abandonment or statute of limitations.

> Marguerite Strop, the City's public art director, visited Mr. Hoelzer on August 6, 1986. Ms. Strop was investigating the

> City's collection of WPA and other new deal era art ... She intended to make an application on behalf of the City for a National Endowment grant for the restoration of the murals, but the Plaintiff refused to cooperate. (Id. at 1109; A49; emphasis added).
>
> Sometime during the summer of 1986 Mr. Hoelzer called the GSA with respect to an ownership disclaimer ... the GSA ... suggested the matter be resolved directly with the City. (A49-50).

Shortly thereafter, the City's Department of Law wrote to Mr. Hoelzer:

> It has come to my attention that you are in possession of murals painted in Stamford High School by James Daugherty ...As the owner of these works of art, we are anxious for their return...
>
> ...
>
> As you are informed of the status of these panels, you, or course, will not consider presenting them for any alternate display or ownership. (emphasis added).

On October 14, 1986 Mr. Hoelzer responded:

> 1. The murals were knowingly trashed by Stamford more than fifteen years ago.

2. As such, Stamford has no legal claim to them.

3. They belong to me.

The City again wrote to Mr. Hoelzer on November 13, 1986, stating:

> ... [Y]ou took these murals knowing exactly what they were and that they did not obviously belong to the person you accepted them from. As you have indicated in your own correspondence to the federal government you have realized from the beginning that these panels were not yours... If necessary, we are prepared to bring legal action to prove our title to the murals or to prevent any transfer of the same. (emphasis added, Id, at p.1110; A50-51)

Hoelzer was so upset by the trial court's decision, that he sought and received the extraordinary relief of an interlocutory appeal, but again lost his battle for ownership before the Second Circuit, Hoelzer v. Stamford, 933 F.2d 1131 (2d Cir. 1991) (App A8 - A27).

On remand, the trial court entered judgment for Hoelzer for $557,200 against

the City based upon his affidavit of time spent working on the murals. The City appealed, and the judgment was affirmed in part and modified in part, with Hoelzer winning the goal of ownership after losing two prior decisions, since the City elected to abandon title to the murals to him. The Second Circuit ruled that the City was correct in its argument that it was being forced to pay for services that it did not request, and had no knowledge would be so expensive, at the time Hoelzer did the unauthorized restoration work in 1986-7 (Hoelzer's petition, p.7, fn 2).

The only previous written estimate given by Hoelzer was in 1972 for restoration ("Remove glue, flatten canvases, clean paintings, retouch, prevent further flaking, and roll them and identify, ready for storage and rehanging" of 900 square feet of canvas) at $6,400. (722 F. Supp. at 1108; A44).

In 1980, Hoelzer gave an estimate to a City representative to restore the murals for a total of $63,000. (Id. at 1109; A46).

The stubborn refusal of Hoelzer to cooperate with the City by either returning the murals as demanded by the City in 1986 without the 80% of the work he did in 1986 and 1987 (Hoelzer's petition, p.7, fn 2), or in refusing to update his previous estimates of $6,400 or $63,000, resulted in the City being surprised by a judgment of the trial court 100 times his 1972 estimate and 10 times his 1980 estimate.

Therefore, the Second Circuit correctly ruled that the City could satisfy the judgment of $557,200 in full by giving title to the murals to Hoelzer, Hoelzer v. City of Stamford, 972 F.2d 495, 498 (2nd Cir 1992) (App A1- A7).

The City of Stamford never questioned the fact that Mr. Hoelzer was

entitled to payment for the stabilization of the murals that came into his possession in 1971. The City offered in 1986 to pay what Mr. Hoelzer estimated in 1972 to be the cost of such emergency restoration and stabilization, or $6,400 (A5). At trial, the City put the upper limit of fair compensation at $60,000, based upon the figures given by the experts on both sides; this is still the City's position, as indicated in the stipulation signed in October 1991, p. A-85.

However, the City always disputed the equity of Hoelzer's foisting services that the City did not request, since Hoelzer did 80% of the total restoration work <u>after the City demanded that he return the murals</u>, and since his bill far exceeded the value of his services, since the trial court found that there "... may, as a practical matter, be little if

any market value" for the murals (p. A30).

ARGUMENT

1. The Second Circuit did not "so far depart from the accepted and usual course of judicial proceedings...as to call for an exercise of this Court's power of supervision".

Rule 10.1 of the Supreme Court states that a petition for a writ of certiorari "... will be granted only when there are special and important reasons therefor" when the Circuit Court has "... so far departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's power of supervision".

This dispute does not involve a question of federal law, but interpretation of the law of equity of the state of New York. ("On the equities, we cannot say that Stamford should be compelled to pay any such amount unless

it is willing to do so." 972 F.2d at 498; A7).

Hoelzer cannot complain that the Second Circuit erred in awarding the City the option to give him title to the murals, since that is the relief he sought from 1986 until 1991. Hoelzer, who claimed that the mural is worth $1.2 million dollars according to an appraisal he obtained from Sotheby's (A4, A16, A52), cannot complain that it is unfair that he can't force the City to pay for his services rather than elect to satisfy its obligation by giving him the murals, especially since the Second Circuit found Hoelzer to be at fault in never demanding payment for his services until years after he performed work without the consent of the city.

Hoelzer's complaint brings to mind the dedication to Truman Capote's last, unfinished novel, Answered Prayers: "More

tears are shed over answered prayers than unanswered ones"- St. Teresa of Avila.

2. The Second Circuit correctly allowed the City of Stamford to satisfy a judgment of $557,200 by returning murals to petitioner Hoelzer in lieu of paying damages.

The City argued vigorously that Hoelzer was an officious volunteer, who improved the murals despite knowledge of an adverse title claim, and who is therefore not entitled to restitution. Chicago Title Ins Co v. Farmers Ins Co, 734 S.W. 2d 887 (Mo. 1987). Hoelzer could have litigated title after the City demanded the return of the murals in September, 1986; instead he had his apprentice restore the murals for almost a year after October 1986 doing 80% of the work for which he later claimed hourly reimbursement. First Federal Savings & Loan Assoc. of Missouri v. Wills & Farris, 789 S.W.2d. 873, 875 (Mo.App. 1990).

There is a public policy argument against encouraging an art conservator to take control of fine art, "improve" it in hopes of selling it, and after losing an adverse title claim, profit from the unwanted work done on speculation.

The Second Circuit acted equitably when it gave the City the choice to pay Hoelzer $557,200 for such hostage taking, 100 times his 1972 estimate, and 10 times his 1980 estimate, or to do what Hoelzer always wanted, which was to get title to the murals as payment.

This is a situation where Hoelzer, in the face of two letters from the Corporation Counsel asserting title and demanding return of the murals, engaged in a race with the City to complete the murals, in the hopes of selling it to some third party at the value he obtained from Sotheby's of $1.25 million.

Awarding Hoelzer the exact amount which he requested in his affidavit,

despite his earlier estimates of $6300 and the 1980 estimate of $63,000, would be unconscionable and unfair. The City's expert testified that a reasonable restoration fee would be less than $75 a square foot, and Hoelzer's own expert quoted $200 a square foot; the trial court awarded Hoelzer $636 per square foot, for work done contrary to the hostile title claim of the City. The Second Circuit corrected this injustice in giving the City the option of payment or turning over title, which is what Hoelzer sought.

Hoelzer misquotes the Second Circuit decision at pp. 7 and 19 of his Petition, implying that the Second Circuit erred by finding that the City did not know the amount of Hoelzer's hourly claim until 1992. In fact, the decision simply states that:

> Nevertheless, from a review of the evidence, it is clear that the City of Stamford could have had no idea that the cost of restoring the

> murals would come to as much as $557,200. When it claimed ownership and conceded that Hoelzer should receive some compensation for his labors [in 1986], the City could not have expected that Hoelzer would claim nearly as much as $557,200. Equitable compensation should not unduly prejudice the party which would otherwise receive the benefit...On the equities, we cannot say that Stamford should be compelled to pay any such amount unless it is willing to do so. (972 F.2d 495 at 498; A6-A7; emphasis added).

The only mention in the decision of "1992" is in a different paragraph:

> These estimates (the 1972 and 1980 estimates) are a small fraction of the $557,200 which Hoelzer eventually claimed at the 1992 trial before Judge Stanton. (Id. at 498; A6).

The decision cited by the Second Circuit stands for the equitable proposition that two negligent parties should not recover against each other when both suffer a loss, Alden Auto Parts v. Dolphin Equipment Leasing, 682 F.2d 330, 333 (2nd Cir 1982). In this case, Hoelzer's refusal to cooperate with the

City so that he gave no figure for his services, until years after they were completed in 1987, made it inequitable for him to complain that he must be paid in money as opposed to the product of his services.

CONCLUSION

The City believes that the Trial Court erred when it rejected the City's arguments -- based on essentially undisputed facts --that Hoelzer acted in "bad faith" by restoring the murals after the City, in 1986, asserted that it owned the murals, wanted them returned, and would take legal action if necessary; that it is contrary to public policy for an art "conservator" to modify a work of public art in the face of a contrary claim of title, without the consent of the owner; and that it is unfair and inequitable for the City to be forced to pay for "restoration" services that far exceeded the value of the finished

product -- a finished product which the Trial Court found has no market value. Although the Second Circuit did not reverse the Trial Court, it did achieve what it believed to be an equitable result, declining to force the City to pay $557,200 for work that in 1986 or 1987 it could never have imagined would prove to be so expensive.

The Second Circuit's decision, seeking to avoid penalizing the City, and reaching an equitable result, is not a departure from established principles of equity, much less a departure warranting supervisory intervention of this Court. To the contrary, to suggest that a case in which a party received precisely the relief it had requested from the start, is one requiring this Court's exercise of its supervisory power, borders on the frivolous.

For the above reasons, the Petition for Certiorari should be denied.

THE RESPONDENT
CITY OF STAMFORD

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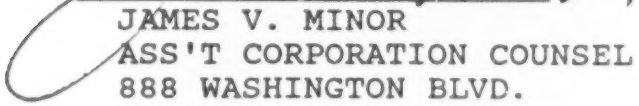
BY 

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CERTIFICATION

This is to certify that all parties required to be served have been served as follows: five (5) copies of the foregoing Brief of the Respondent in Opposition to the Petition for Writ of Certiorari have been mailed on November 19, 1992, postage prepaid, and one copy faxed to:

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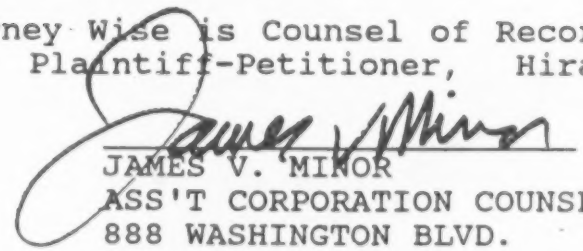

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